the tribunal is required under s 27 of the Act to hear claims, having regard to the principles of natural justice.

For the reasons given, both grounds of appeal must succeed. As to what order I should make, Mr Kor for the appellants has referred me to s 36 of the said Act. It is his submission that having regard to the circumstances I have described, the proper course to take is under para (c) of the section and that is to remit this case back to the tribunal with such directions as I think proper. That I do.

I order that this case be remitted to the small claims tribunal, with the following directions: (a) that the case be heard by another referee; (b) that there be compliance of s 15(4) of the Act; and (c) that full opportunity be afforded to the appellants under s 27 of the Act.

I also order that the respondent pay the costs of this appeal fixed at no more than $500 provided that the small claims tribunal makes an award in his favour, and I direct that the tribunal deduct this sum, or any other smaller sum it may award to the respondent as costs to the appellants.

Appeal allowed.

Solicitors: *Michael Kor & Co.*

Reported by *Azra Moiz*

Chew Swee Hiang v Attorney General of Singapore & Anor

HIGH COURT (SINGAPORE) — SUIT NO 3906 OF 1983
RAJAH J
26 SEPTEMBER 1990

Public Servants — Teacher in government-aided school — Whether employee of government or management committee of school

Tort — Negligence — Causation — Several possible factors causing injury

The plaintiff was a teacher in Pei Hwa School. Her services were terminated in May 1982 on the ground that she was medically unfit to continue as a teacher. On 16 July 1980, the plaintiff was diagnosed as suffering from spondylosis. She did not respond to conservative treatment. She was referred to the second defendant, Mr Tham, the senior neurosurgeon on 15 August 1980. Mr Tham stated that he explained her condition to the plaintiff and the risk that if she was not operated on she would have permanent paralysis in two or three years. He explained the complications that may have arisen. There was a risk of hoarseness that may be temporary or permanent (1 out of 100 cases) and paralysis in one or more muscles of the limbs (1 out of 1,000). On 23 August 1980, the plaintiff signed a consent form for the operation. On 31 October 1980, the plaintiff was admitted to hospital for her operation. On 1 November, she signed a consent form again. On 3 November, Mr Tham performed the operation.

The plaintiff claimed that none of the doctors or surgeons who examined her explained her condition to her. She signed the consent form because she was told to by Mr Tham but did not understand its contents. She stated that Mr Tham never told her that her vocal chords could be damaged in the operation.

The plaintiff claimed that after the operation she could not swallow water and that she could not speak. She also had a fever. She claims that she complained of this but there is no record of it. On her discharge on 15 November she could only speak softly and she had difficulty swallowing. She saw her family physician on 17 November. He did not find any difficulty in swallowing or anything wrong with her voice.

Examination showed that her right vocal chord was immobile and that she had a right cervical scar. She was also examined by an ENT surgeon. He stated that her difficulty in swallowing was caused by damage to the recurrent laryngenal nerve. This could have been caused by the operation. The plaintiff relied on this evidence.

The plaintiff then commenced legal proceedings against the Attorney General of Singapore and the second defendant (Mr Tham) for damages for negligence. The issues in this case are as follows:

(1) whether the plaintiff was employed by the government or the management committee of Pei Hwa School;
(2) whether the second defendant had negligently performed the operation;
(3) whether it was such negligent operation which resulted in the plaintiff's voice being lost or hoarse or soft so that she could no longer function as a teacher;
(4) whether she consented to the operation such as it was when she signed the consent.

Held, dismissing the plaintiff's action:

(1) The loss of voice first occurred two months after the operation.

(2) Viral infection and post-operative scarring are the possible causes of the paralysis of the vocal chord.

(3) The burden of proving causation rested on the plaintiff. Where a number of different factors could cause the injury, there can be no presumption that one factor rather than the others caused the injury.

(4) The test for establishing employment involves four indicia: (a) employer's power of selection of his employee; (b) payment of wages; (c) employer's right of control over the method of work; (d) employer's right of suspension or dismissal.

(5) Applying the test to the plaintiff, she was an employee of Pei Hwa Committee of Management and not in government employ.

(6) The plaintiff gave her consent fully appreciating the risks and consequences of the operation.

Case referred to

1 *Wilsher* v *Essex Area Health Authority* [1988] 2 WLR 557 (folld)

KS Chung for the plaintiff.
Ter Kim Cheu (*Tan Chee Meng* with him) for the defendants.

Cur Adv Vult

Rajah J: The plaintiff, Madam Chew Swee Hiang, a married woman, was 57 years old when the hearing of this action commenced. She started to teach in Pei Hwa School, a Chinese language government-aided school, in 1957 and continued to teach there until 24 May 1982, when her services were terminated on the ground that she was medically unfit to continue as a teacher. When her services were terminated in May 1982 she was an education officer, scale 8.

In May 1980, Madam Chew experienced some pain in her neck region and left fingers. She consulted a Dr Wong Heck Sing (PW2), her family physician since 1961. He prescribed medication to relieve the pain; he also prescribed a neck collar for her use. Neither the medicine nor the neck collar did much to help the patient. On 16 June 1980, he referred her to a Dr Lim for an X-ray. The X-ray report showed that she had C3-C7 spondylosis (PB-01).

On 8 July 1980, Dr Wong referred Madam Chew to Prof Balachandran (DW3), a senior orthopaedic surgeon at the Singapore General Hospital (SGH). Prof Balachandran said in his evidence:

> When I first saw her I prescribed conservative treatment. As an outpatient I gave her one week's medical leave to rest at home. She had physiotherapy treatment as an outpatient in the way of heat and traction. I have no record on this but it is normally two or three times a week. I also prescribed drugs for relief of pain. I told her that at the end of her medical leave she should be able to go back to light duties at her job. She saw me again on 27 July 1980. I noted that her condition had deteriorated so I had her admitted into SGH on 29 July 1980. She stayed there until 15 August 1980 when I referred her to Mr Tham, the senior neuro-surgeon and head of the department at the Tan Tock Seng Hospital (TTSH). During her stay at the hospital she was given intermittent cervical treatment in the ward and she was also sent down to the physiotherapy department. (Page 104 of N/E.)

It is also Prof Balachandran's evidence that he informed her of what her condition was (p 106 N/E). In her evidence Madam Chew maintained that neither Prof Balachandran nor anyone else gave her any explanation as to what her condition was nor did she ask anyone why she was being subjected to these treatments.

However since she did not respond to these treatments Prof Balachandran referred her to Mr Tham Cheok Fai (Mr Tham), the senior neuro-surgeon and head of the department at TTSH. Mr Tham had her warded at TTSH from 20 August 1980 to 6 September 1980. Mr Tham spoke to her in Cantonese. Madam Chew is a Teochew but her Cantonese was good enough to make herself understood to Dr Tham and for her to understand Mr Tham. It is Madam Chew's evidence that on the day she was admitted to TTSH Mr Tham did not give her any explanation as to her condition nor did he do anything to help explain to her her condition.

Mr Tham however is quite firm in his evidence when he says (pp 159 to 162 of N/E):

> After I had examined her on 20 August 1980 I explained to her the nature of her illness. I told her that her illness was due to outgrowths from the back of her spinal column in the neck and these outgrowths were pressing on her nerves to the left arm and also the spinal chord. She did not bring X-rays from SGH so I told her that I would have to have X-rays of the spine of her neck and to do a special X-ray test to show visibly whether these bony outgrowths are pressing on the spinal chord and nerves. She would have to be admitted for this. In this explanation I used diagrams to explain to her. I told her that there would be an injection of a medicine into her spinal column in the lower part. Then she would be tilted head down to let the medicine run towards the neck and if there are bony outgrowths in the neck this column of medicine will be held up by the outgrowths. This would tell us whether the outgrowths are pressing on the spinal chord and spinal nerve in her neck. This is called a myelogram. I told her what I would do if there were bony outgrowths pressing on her spinal chord and nerve. If there was pressure on the spinal chord and spinal nerves this pressure or bony outgrowths would have to be removed because if this pressure was not removed from the spinal chord in two or three years she would have permanent partial paralysis of her four limbs. She would also have difficulty in passing water and motion. There was also a danger that should she fall and throw her neck and head backward, ie hyperextension there would be bleeding into the centre of the spinal chord causing immediate permanent partial or complete paralysis of all the four limbs. I told her that the operation would be carried out on the right front side of her neck. In this operation I would have exposed to show up the front of the bony spine of the neck and drill a hole over the area of the bony outgrowths and remove these outgrowths that were pressing on the spinal chord. There was no other way of treating her since she had exhausted all other conservative means of relieving her pain and pressure from the chord. Then I would take a block of bone from either the bone taken from a bone bank of the operating room or if that was not available from her pelvic bone.
>
> Q: Did you explain to her the complications that would arise from this operation?
>
> A: Yes. I explained to her the two main complications. First the hoarseness or softness of voice after the operation. I specially told her this because she was a teacher. Usually the softness or hoarseness of voice is temporary but occasionally it could be permanent. I told her that this had not happened in any of my operations before. However some neurosurgeons say that this can happen in one out of 100 cases. Secondly which is more serious and this was paralysis of the muscles of one or more limbs and that this was rare and also that it had not happened in any of my cases. Some neurosurgeons say that this can happen in one out of 1,000 cases. I added that she had exhausted all her conservative means of treatment and if the myelogram were positive showing spinal chord pressure she would seriously have to consider the operation. However she could always change her mind about having the operation at any time. After that she was hospitalized (AB3). The nurses' notes state that she arrived at the ward at 12 noon ...
>
> AB88 — I replied to Dr Balachandran as at AB88/89. I told Dr Balachandran that there was one point in the

examination which shows her reflexes to be intermittently brisk. This means sometimes it is brisk and at other times normal. The patient was very anxious and that she should have a myelogram to prove visually the pressure on the spinal chord. She would also have to have an ECG recording of the heart; X-ray of the cervical spine and a blood sedimentation rate. The explanation I gave Madam Chew is a department practice as well as my own practice. The explanation will take an hour if the patient does not fully understand English. I am of the view that the patient fully understood what I was telling her. I told her she could change her mind at any time.

On 23 August 1980, Mr Tham handed her a consent form (PB169) which she says he asked her to sign. She alleges that Mr Tham did not tell her why she was being asked to sign and that she did not understand what it was all about but nevertheless she says she signed it because Mr Tham had asked her so to do. But she does not deny that Mr Tham had told her that he wished to see her husband.

Mr Tham's evidence on the signing of the consent form dated 23 August 1980 (exhs D13 and AB95) is quite contrary to her evidence. He says and I quote (pp 162 to 164 of N/E):

AB94 — Consent for operation dated 23 August 1980. It was a consent for myelogram and operation taken by me. My signature is at the left side middle bottom of the space next to the signature of the MO (admitted and marked D13). The signature of the MO is that of Dr Roger Heng (DW1).

Q: How was the consent obtained from Madam Chew?

A: We went to Madam Chew's bedside and told her that she had to consent to do a myelogram and if the myelogram was positive this consent would also be used for the operation. The printed wording of the consent is intended to cover both the myelogram and the operation. She was very nervous and asked whether the myelogram had complications and whether it was painful. I told her that the pain would be like that of an ant bite or an injection. I also told her that she would have headache, vomitting and mild fever for about two or three days. She again questioned me on the complications of the operation. I repeated to her what I had told her on 20 August 1980. I said the main complication was hoarseness and softness of voice. She I believe understood what I was saying. Dr Roger Heng translated the words which she did not understand and which were few in number into Teochew. There was also a nurse present on this occason. Madam Chew signed the consent form first, then Dr Roger Heng and then I.

AB5 — 25 August 1980. 'Mr Tham to speak to relative on Saturday.' It is my practice and departmental practice for all patients.

AB6 — 27 August 1980. The staff nurse told me that her husband was too busy on Saturday and would come on Friday at 9am. On 28 August 1980 I was again told by the staff nurse that her husband could only come at 11am. On 29 August 1980 I saw the husband. It is departmental policy as well as mine to explain to near relatives. This was not because the patient did not understand my earlier explanation.

On 26 August 1980, Madam Chew was sent for an X-ray investigation. X-ray report showed that she had severe cervical spondylosis and on the following day, 27 August 1980, Mr Tham says that he informed her of the result and of the complications that might arise if she did not go through the operation, ie that there was a possibility of semi-paralysis.

On 29 August 1980, her husband saw Mr Tham. Also present at the interview on 29 August 1980 was a Mrs Evelyn Tay, her husband's cousin. Madam Chew was waiting outside Mr Tham's room. She says that she went into the room subsequently when Mr Tham told her in Cantonese that the disease she was suffering from was an occupational disease and that she, in the course of her work, had to bend her head to mark the papers of her pupils and that as a result the bone in her neck region pressed against the nerve and that was why she had the pain in her neck and in her fingers. He told her that if she refused to undergo the operation she could be semi-paralysed and that she could have difficulty in passing motion. In her evidence on this aspect of the case she went on to say 'but I would like to explain that from the beginning to the end he did not tell me that my vocal chord could be damaged in the operation'.

On 4 September 1980, she signed the second consent form for the operation scheduled for the following day, 5 September 1980. Here again she alleges that no explanation of the nature of the operation was given to her by Mr Tham. However the scheduled operation was cancelled because she was suffering from fever. She was discharged from TTSH on 6 September 1980.

On 12 September 1980 she consulted a Dr James Khoo, a neurosurgeon in private practice. According to her he gave her some tablets but that did not relieve her pain.

On 17 September 1980 she saw Mr Tham by appointment. She was having a cold. He told her to return to work on 29 September 1980 and to come back to him again when the cold was over. After seeing Mr Tham she consulted Dr Khoo again on 17 September 1980, 23 September 1980 and 14 October 1980. He examined her and gave her tablets for oral consumption but these did not relieve her pain.

On 29 October 1980 after a lapse of six weeks she went to see Mr Tham without a prior appointment. This was because the pain in the neck persisted.

On 31 October 1980 she was admitted to TTSH for operation. On 1 November 1980 a third consent form (exh D14 AB96) was signed by her. She stated that no explanation had been given to her as to why she was being asked to sign the consent form. On 3 November 1980 the operation to her neck was performed by Mr Tham.

Medical leave had been given to Madam Chew from 23 June 1980 to 3 November 1980, a total of 131 days.

Madam Chew alleges that after the operation on 3 November 1980 she was given water to drink by a nurse; she was also given a straw through which she was to drink the water. She tried to drink but the water flowed out of her mouth. She could not swallow the water and threw it out. She further alleges after the operation she had great difficulty in drinking water; that she had a fever; that she had difficulty in talking; that she made attempts to speak but was unable to do so and that when she did try to speak she could not be heard.

Mr Tham saw her after the operation once a day in the morning. She says that she may have told Mr Tham about her problem but she is sure that she told the houseman about it but there is no record of this in the hospital notes. She was discharged from Tan Tock Seng Hospital on 15 November 1980. She goes on to say that she had no voice when she was discharged and that even at that time she had difficulty in drinking water. She could speak softly at the time of her discharge from hospital.

On the second day after her discharge from TTSH, that is to say on 17 November 1980, she went to see Dr Wong (PW2), her family physician.

With regard to her post-operative condition Dr Wong (PW2) has this to say: 'When she saw me on 17 November 1980 there was no record of choking. No record of difficulty of swallowing.' On this visit she did not complain to him of soreness or loss of voice nor did the doctor note anything wrong with her voice. On her next visit on 5 December 1980 she complained of hoarseness of voice and pain in her left hand. On 15 December 1980 she told him that Mr Tham had said that the hoarseness would last for three months. On 14 May 1981 she came to him and asked him to refer her to a private ENT surgeon. She said she tried practising teaching but her voice soon disappeared. She also told him the therapist told her that her voice lacked volume. She told him Mr Tham told her to return to work. She got a letter from Dr Seow, the present ENT specialist, that she had a right vocal chord paralysis and that as a result of speech therapy that the paralysis of the vocal chord had been compensated (for the right paralysis.).

He goes on to say:

> After the operation she saw me frequently. I can't recall her telling me that Mr Tham did not warn her of the risks involved in the operation. She can speak normally but she can't raise her voice.

On 8 January 1981 Mr Tham gave her a medical certificate from 11 January 1981 to 7 February 1981. In the meantime on 4 February 1981 she had consulted a solicitor who wrote to TTSH asking for a detailed specialist report on her operation and the chances of her regaining her normal tone of voice. Madam Chew saw Mr Tham again on 11 March 1981 who referred her to the ENT surgeon at TTSH. The referral reads:

> Brief history and diagnostic tests —
>
> This patient had severe cervical spondylosis which was causing root pains that was intractable. Cloward operation was performed on 3 November 1980. Post-operatively her voice was normal. But on 8 January 1981 she lost her voice and I suspect that she has a recurrent laryngeal paralysis bilaterally. I do not know whether it is a unilateral or bilateral paralysis. Will you kindly examine her to find out for me. The Ministry of Education wants a report on her.

Dr Benny Cheng, an ENT surgeon at TTSH, gave his opinion (PB116-117) on Madam Chew's condition to her then solicitors, on 23 July 1982, presumably in reply to the solicitors' letter, and it reads as follows:

> M/s HL Wee & Co
> Advocate & Solicitors
> Unit 03-23 3rd Floor
> Orchard Plaza
> Singapore 0923
>
> Through: Director
> Tan Tock Seng Hospital
>
> Dear Sir
>
> Chew Swee Hiang
> NRIC 02335803D
>
> This patient was seen in the ENT Clinic, Tan Tock Seng Hospital on 8 January 1981 with a history of hoarseness of voice following an operation for severe cervical spondylosis performed on 3 November 1980.
>
> There were two conflicting history with regard to the onset of the hoarseness of voice and therefore it was not possible to give an accurate comment on the cause for the hoarseness of voice. Significant clinical examination showed the patient had a right cervical scar. Indirect laryngoscopy showed she had no movement of the right vocal cord and it laid in the paramedian position. The left vocal cord was mobile and was able to cross over the midline and approximate into the right vocal cord.
>
> At the first visit her voice was weak and she would lose it when she spoke for about 10 mins.
>
> She had undergone some speech training lessons and her voice had improved. Her voice is now soft but audible but not husky. She still gets aphonic if she overstrains or prolongs her conversation.
>
> Opinion
>
> The patient's voice has improved considerably. She should be able to resume teaching if microphone could be provided to her during lesson time, so that she will not be able to overstrain her voice.
>
> The actual cause of the hoarseness of voice is difficult to determine. As I was not present at the operation and coupled with the conflicting history put forward with regard to the onset of the hoarseness of voice, any comments will just be conjecture and would not be fair to either party

concerned. However, any operation in the neck close to the cervical traces and oesophagus is very near to the recurrent laryngeal nerve which is responsible for the vocal cords movements.

I like to add that with further speech therapy and may be with the injection of Teflon paste into the right vocal cord her voice will even become stronger and nearer to normality.

Yours faithfully

Sgd Benny Cheng
FRCS, DLO

Mr Cheng also recommended to her that she gets a second opinion in London and put her on to Mr Pracy, an ENT surgeon, whom she eventually consulted in London on 30 June 1983 and who gave evidence at the trial.

In a letter dated 13 July 1983 he gave his opinion on the case of Madam Chew as follows:

Madam Chew has a complete paralysis of the right vocal cord which is cause of her weakness of voice. This paralysis was not present before the operation and the history of choking fluids for some days immediately after the operation intermittently for periods of up to two weeks, dates the injury to between the time that the anaesthetic was administered and the time that Madam Chew recovered from the anaesthetic.

Choking is due to the fact that the recurrent laryngeal nerve supplies the muscles which relax the sphincter at the upper end of the oesophagus in the act of swallowing. When the nerve is damaged the sphincter fails to relax on the injured side and, as a consequence, fluid which should pass down through the oesophagus impinges on the unrelaxed muscle and spills over into the larynx, trachea and bronchi, causing the patient to choke. Choking and difficulty in swallowing fluids are diagnostic of a failure of nerve transmission. This of course could be due to disease of the nerve itself or damage to the nerve along its path way. The operation of access to the transverse processes of the cervical vertebrae involves the retraction of those structures which lie between the skin and the transverse processes and it is quite possible for the nerve to be damaged at this stage in the operation.

Madam Chew is quite clear that her difficulty in swallowing was a difficulty in swallowing fluids and this indicates clearly that her trouble was a neurological trouble rather than an organic obstruction in the lumen, wall or outside wall of the gullet. It seems clear to me that she is right in attributing her present symptoms to operative surgery which relieved the pain she was experiencing.

In the circumstances the plaintiff then commenced legal proceedings against the Attorney General of Singapore and Mr Tham for damages for negligence.

The issues in this case are as follows:

(1) whether the plaintiff was employed by the government of Singapore or the Management Committee of Pei Hwa School;

(2) whether the second defendant (Tham) who operated on the plaintiff on 3 November 1980 had negligently performed the operation;

(3) whether it was such negligent operation which resulted in the plaintiff's voice being lost or hoarse or soft so that she could no longer function as a teacher;

(4) whether she consented to the operation such as it was when she signed the consent.

Issue No 1

The plaintiff relies on the evidence of Mr Robert Pracy; the second defendant who is a well known and respected surgeon in Singapore, has given evidence himself and at the same time has relied on four expert witnesses, namely, (a) Mr Kunaratnam (DW2 N/E 92-101), (b) Mr Balachandran (DW3 N/E 102-106, 117-124), (c) Mr Baratham (DW4 N/E 106-117), (d) Dr Ong Peck Leong, neurosurgeon (DW6 N/E 131 to 152).

Dr Pracy gave expert evidence on behalf of the plaintiff. He admitted that his opinion was based partly on the examination of the patient after the operation. His opinions were based on a meeting with the plaintiff lasting one and a half hours on 30 June 1983 in London, two and a half years after the operation. Essentially he gave the following expert opinions:

(a) The operation performed by the second defendant on the plaintiff for cervical spondylosis was successful but it had left her with a disability (N/E p 20).

(b) It was possible that the damage to the right vocal cord of the plaintiff was caused by the second defendant during the operation (N/E p 16 and PB 136).

(c) Following a thyroid operation, a recurrent laryngeal paralysis is a well recognized complication (N/E p 32).

(d) The second defendant should preferably have performed the Cloward operation by approaching from the left side of the neck of the plaintiff (N/E pp 16, 18 and 25).

(e) The position with regards the consent form in UK has changed over the years; the current view in UK is that the doctor should explain to the patient:
(i) fully the nature of the operation;
(ii) the possible complications (N/E p 18).

Dr Kunaratnam gave the following opinions:

(a) That there are three possible causes for the damage to the vocal cord, viz:
(i) direct injury during the surgery;
(ii) injury to the right crico-arytenoid joint during intubation causing fixation of the joint which in turn causes fixation of the cord; and

(iii) idiopathic causes, the commonest being viral aetiology.

Dr Kunaratnam however ruled out cause (ii) in this case but maintained that cause (iii), ie idiopathic causes, could not be ruled out because the clinical notes (AB53) showed that softness of voice was first indicated on 8 January 1981, about two months after the operation and AB 46 indicated that the plaintiff had a low grade fever five days after the operation.

(b) That surgical trauma (ie injury during surgery) and idiopathic causes are the two major causes for vocal cord paralysis with each accounting for about 30% of such cases. The remaining 40% are due to other factors.

Essentially Prof Balachandran and Drs Ong and Baratham gave the following expert opinions:

(a) That the Cloward operation performed by the second defendant on the plaintiff was successful and that he had exercised proper care and skill (N/E pp 111, 119 and 133). According to Dr Ong, the steps taken by the second defendant were in accordance with those stated by Dr Cloward.

(b) That there is an inherent risk of injury to the vocal cord for the Cloward operation of about 1-2%. Dr Baratham opined that based on a study done by Dr Heeneman (D3 p 9), the risk is about 2.4% but that from his own experience, the percentage is much lower about 1.2% (N/E p 107).

(c) That it is the usual practice for neurosurgeons in Singapore and elsewhere using the Cloward operation to approach from the right side of the neck and that it is not their practice during the Cloward operation to identify and protect the right laryngeal nerve. The Robinson theory is not accepted in Singapore. There is no difference in result whether the operation is from the left or right side of the neck. One of the reasons for the right handed approach is the shape of the special drill used which moves in a clockwise direction.

(d) That from the examination of the clinical notes, including the X-rays and myelopathy report (AB12) the plaintiff was suffering from severe myelopathy. If not treated in time, the symptoms would get progressively worse. There was a likely risk that she would be semi-paralysed or even die if she had not undergone the operation for cervical spondylosis.

(e) Dr Ong concurred with the expert opinion of Dr Baratham who told the court that myelopathy was a malfunction of the spinal cord which could consequently result in difficulty of movement, interference with sensation, difficulties with breathing and bladder and bowel complications; the combination of the last three could result in death of the patient if unattended to.

(f) That in cases of this nature where severe pain was experienced by the patient with cervical myelopathy, the chances of full recovery might be jeopardised if surgery was unduly delayed. This condition of the plaintiff would become progressively worse and she would have lost the use of all her limbs and eventually die.

(g) That given the condition of the plaintiff before the operation it was most unlikely that the plaintiff (who was already on medical leave for 132 days before the operation) would be able to return to her job as a teacher if she had not undergone the operation.

(h) On the disclosure of inherent risks of operation, the practice is for the doctor to decide how much and what details to be revealed to the patient taking into account the best interest of the patient. It is the practice for neurosurgeons to warn patients of possible risk to their voices.

Dr Ong Peck Leong had also given evidence on the possible causes of vocal cord paralysis. He opined that in addition to surgical trauma and viral infection, another possible cause of vocal cord paralysis was post-operative scarring. This would occur when the scar tissues are formed on the area of the neck that was operated on resulting in a constriction of the laryngeal nerve by the scar thereby causing damage to the vocal cord (N/E p 137). Dr Ong further stated that viral infection could not be ruled out as a possible cause of vocal cord paralysis in this case in view of the low grade fever which the plaintiff had on 8 November 1980 and the fact that there was no record of hoarseness of voice during the post-operative period before the plaintiff was discharged on 15 November 1980 until 8 January 1981 (N/E pp 136-137). Dr Ong also testified that if there was any complaint of hoarseness by the plaintiff during the post-operative period, or if such hoarseness was observed by the doctors and nurses, it would have been recorded in the clinical notes as that was and is the practice in TTSH (N/E p 142). Such observations would be recorded either by the doctors or the staff nurses, who were well trained to notice the difference between 'usual' hoarseness accompanying such operations and hoarseness of voice arising from vocal cord paralysis (N/E p 143).

On the issue of liability one of the questions to be determined is when damage to the right vocal cord of the plaintiff occurred. I accept the defendants' evidence that softness of voice occurred about two months after the operation; then according to expert opinions viral infection and post-operative scarring are the possible causes of damage.

Dr Kunaratnam for the second defendant testified that, based on the clinical notes which showed no loss of

voice until two months after the operation, the two most probable causes are (i) direct injury during surgery of the neck; and (ii) viral aetiology. He opined that the above causes are the two most common causes for vocal cord paralysis with each accounting for about 30% of such cases (N/E p 102).

Dr Baratham, based on the clinical notes (AB 46) which showed that the plaintiff had a fever five days after the operation and which contained no record of loss of hoarseness of voice until about two months after the operation, also opined that a possible cause for the plaintiff's loss of voice could be viral infection (N/E p 115).

Dr Ong also gave expert opinion that another possible cause of vocal cord paralysis in an operation of this nature was post-operative scarring — this was due to the laryngeal nerve being constricted by the scar tissues which formed in the area operated on (N/E p 137). Having regard to the clinical notes of the case, Dr Ong also stated that the possibility of the paralysis being caused by viral infection could not be ruled out as the plaintiff had a low grade fever and sore throat on 8 November 1980 (N/E p 137).

Dr Pracy for the plaintiff opined that the vocal cord palsy was possibly caused by the second defendant. The opinion of Dr Pracy was unreliable. He had failed to analyse whether the damage to the vocal cord could have been caused by other factors such as viral aetiology or to eliminate it. His opinions were not based on clinical notes of the case. His opinion that the second defendant should approach from the left side of the plaintiff's neck and that the right laryngeal nerve should be identified and protected were totally rejected by the expert neurosurgeons who gave evidence. As an ENT expert his opinions were based on general surgical procedures which are inapplicable to neurosurgical practices where special considerations apply. He admitted that he is not qualified in neurosurgery and has no experience on the Cloward operation (N/E p 19).

The burden of proving causation rests on the plaintiff. Direct injury during surgery by the second defendant was not a definite or possible cause of damage to the voice cord. Where a number of different factors could have caused the injury, there can be no presumption that one factor rather than the other factors caused the injury (*Wilsher* v *Essex Area Health Authority*[1] at p 564). The plaintiff's claim that the second defendant was in breach of his duty of care in performing the operation is dismissed. Further there is no evidence before me that Mr Tham was in breach of his duty of care he owed her in her treatment.

Plaintiff — Government school teacher or aided school teacher

Mrs Johari, Head of Establishment, Ministry of Education ('MoE'), gave evidence with regard to the question as to whether the plaintiff is a government employee. In her evidence she says (N/E p 124):

> I am familiar with the relationship between aided schools and government schools. I am familiar with the employment history of the plaintiff, Madam Chew Swee Hiang. She was first employed in July 1955 in the Nanyang Primary School, which was a private Chinese school. She was appointed as a teacher in Pei Wah Primary School which is a government-aided school in 1957. She was not appointed by the government. Pei Hwa is an aided school as it is receiving grant-in-aid under the Education Grant-in-Aid Regulations 1957. The grant-in-aid is a subvention from the government for the benefit of the school pupils as long as the managers of the school maintain certain standards and observe certain conditions. At that time any private school can apply for grant-in-aid to be an aided school. The application of a school would be approved if the Permanent Secretary of Education is satisfied that the managers of the school can and will maintain the required standards and observe the required conditions comparable to government schools. The admission and termination of staff in aided schools are done by themselves. In Madam Chew's case she was appointed by the Pei Hwa School Committee. The government does not issue any letter of appointment to an aided school teacher. Madam Chew is on the full CPF scheme. A government school teacher is on a pension scheme. Never on a CPF scheme.

Again at p 127 of the N/E she says:

> ... Her services were terminated wef 24 May 1982. She was given one month's notice by Pei Hwa School Management Committee on 24 April 1982. Her services were terminated by Pei Hwa School because she is an employee of Pei Hwa which is a government-aided school. A medical board was convened on 17 March 1982 and the Board recommended that she should be regarded as permanently unfit as a teacher.

In answer to the question 'If Madam Chew was a government teacher who would write the termination letter?' she said:

> The Ministry of Education would write it. In the case of government-aided teachers the manner of terminating their services would have been the same but the termination letter is written by the Management Committee.

She went on to say (pp 128-129):

> ... If the aided school wishes to employ a new teacher it would have to obtain the permission of MoE. The school interviews the applicant and the MoE sees to it that the minimum standards and requirements are observed. The applicant is not interviewed by the Public Service Commission. It is the MoE which sets the standards and requirements. Madam Chew is on the CPF scheme. She is not eligible for pension. All aided school appointments are employed on full CPF scheme. They are entitled to the same medical benefits as government school teachers. The differences between a government-aided school teacher and a government school teacher are:
>
> (1) for an aided school the letter of appointment is not issued by MOE;
> (2) for Madam Chew is superannuated under the CPF scheme regulations as she is not on the pension scheme;

(3) discipline is handled by the Aided School Management Committee and not by the PSC.

Again at p 130 she says:

> ... She was never employed by the government. She was always employed by Management Committee. The salary is paid to her by the ministry out of the grant-in-aid. A teacher in a grant-in-aid school is not considered by the government as one of its employees.

Mr Chung, in his submission to the court, contended:

> The law on the point of employment and the test applicable as to whether there is a relationship of employer and employee is to be found in *Halsbury's Laws of England* (4th Ed) p 313 para 501:
>
> > 'The test used to be a simple one: an employer possessed the right not only to control what work the employee was to do, but also the manner in which the work was to be done. However, this test required revision in the light of decided cases. It has been said that there were four indicia of a contract of service:
> >
> > (1) the employer's power of selection of his employee;
> > (2) the payment of wages or other remuneration;
> > (3) the employer's right to control the method of doing the work; and
> > (4) the employer's right of suspension or dismissal.'

Applying the test on the evidence before me on (1) I find that it was the Committee of Management of the Pei Hwa School that had employed Madam Chew; on (2) the payment of wages was effected by the Committee of Management; on (3) the right to control the method of doing the work was that of the Committee of Management; and on (4) the employer's right of suspension or dismissal was with the Committee of Management. This being so I find that the plaintiff was at no time in her career a teacher in government employ. She was at all times an employee of the Pei Hwa Committee of Management.

Consent

On the evidence before me I am satisfied that at the time the operation took place the plaintiff knew of the nature of the risks she ran and consequences that could arise if she did not have the operation performed. The risks of and complications that would arise from the operation had been explained to her by the second defendant before the operation. It is Madam Chew's evidence that on the day she was admitted to TTSH the second defendant did not give her any explanation as to her condition nor did he do anything to help explain to her her condition. On the contrary Mr Tham was quite firm in his evidence that this was not so as appears at p 286 of this judgment.

The plaintiff was an over anxious person who consulted a number of doctors during the relevant period. She was not the type of person who would embark on such an operation without her being fully apprised of the risks and consequences of the operation. I am satisfied that when she gave her consent to the operation she was fully apprised of the risks and consequences of the operation.

I dismiss the plaintiff's claim with costs.

Claim dismissed.

Solicitors: *Chung & Co.*

Reported by *S Surenthiraraj*